

WEDNESDAY, DECEMBER 4, 2002

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:00 a.m., with Mr. Chiang, Chair, Mr. Andal and Mr. Parrish present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code section 7.9.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

William Alan Sobel, A Law Corporation, 129920

12-31-94, \$4,000.00 Claim for refund

For Claimant:

No Appearance

For Franchise Tax Board:

Suzanne Small, Tax Counsel

Action: The Board took no action.

Baxter Healthcare Corporation, 140712

12-31-95, \$ 1.00 or more Claim for Refund

For Claimant:

No Appearance

For Franchise Tax Board:

Geoff Way, Tax Counsel

Action: The Board took no action.

**BUSINESS TAXES APPEALS HEARINGS**

Sang Young Whang, 128108

4-1-97 to 3-31-00, \$28,678.39 Tax

\$00.00 Penalty, Finality

For Petitioner:

Samuel B. Choi, CPA

Sang Young Whang

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

For Property and Special Taxes Department:

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether taxpayer received misinformation qualifying for relief from the tax under Revenue and Taxation Code section 6596.

Whether the evidence establishes that the taxable ratio of 34.65 percent is excessive because the site tests were not representative.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the petition be redetermined with adjustments.

Darrell L. and Sandra D. Goble, 115302

4-1-97 to 12-31-99, \$127,696.75 Tax

For Petitioner:

Philip Garrett Panitz, Attorney

Ryan D. Schaap, Attorney

For Sales and Use Tax Department:

Trecia Nienow, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

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Issues: Whether the evidence shows that Home Depot was the contractor and responsible for payment of the tax on the cost of materials and fixtures installed by petitioners, based on California Code of Regulation, Title 18, section 1521, subdivision (a)(2).

Whether the evidence shows that garage doors used in the performance of lump-sum contracts to improve realty are fixtures rather than materials.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**Labor Force, Inc., 109371**

1-1-98 to 12-31-98, \$2,800.00 Fee

**Labor Force, Inc., 109375**

1-1-99 to 12-31-99, \$1,534.00 Fee

**Labor Force Entertainment, Inc., 141004**

1-1-98 to 12-31-99, \$2,234.00 Fee

**MedForce, Inc., 141029**

1-1-98 to 12-31-98, \$847.00 Claim for Refund

For Petitioner:

Russell A. McClain, Attorney

Eric Capogrosso, President

For Sales and Use Tax Department:

Robert Tucker, Tax Counsel

For Department of Toxic Substance Control:

Dennis Mahoney, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether petitioners and claimant are employers and thus subject to the annual environmental fee imposed upon certain employer corporations (Health and Safety Code section 25205.6, subdivision (b)).

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and duly carried, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, Mr. Chiang and Mr. Parrish voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**Michael Carl Davis, 117184**

10-1-97 to 12-31-99, \$11,611.72 Tax

For Petitioner:

Michael Davis

For Sales and Use Tax Department:

Mark Woolston, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether the evidence shows that the cost accountability test overstated petitioner's liability.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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**PUBLIC COMMENT**

Speaker: Doug Boyd, The HdL Companies, City of Laguna Hills

Mr. Boyd requested that the petition for reallocation for Laguna Hills be placed on the December 19, 2002 Board meeting calendar for consideration.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Chiang not participating, the Board ordered that the matter be placed on the December 19, 2002 calendar for consideration regarding whether or not to have a hearing.

**BUSINESS TAXES APPEALS HEARING**

East Katella Partnership, 92782, 117104, 128635

1-1-99 to 6-30-99, \$14,951.00 Tax

1-1-99 to 3-31-00, \$10,926.43 Tax

1-1-99 to 4-28-00, \$17,599.63 Tax

For Petitioner:

Jerry Callihan, Representative

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues in the petition of 117104:

Whether petitioner, who had leased the operations of the restaurant to California Country Kitchen, was the retailer of catering and banquet meals served within the hotel.

Whether the estimated banquet sales are overstated.

Issues in the petitions of 92782 and 128635:

Whether petitioner had constructive knowledge that its tenant was using petitioner's prior seller's permit number.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 10:35 a.m. and reconvened at 10:45 a.m. with Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel present.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS,  
ADJUDICATORY**

California Steel Industries, Inc., 160703

1995, \$901,729.40 Assessment

1996, \$13,055.36 Assessment

Considered by the Board: November 13, 2002

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Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Action: (Motion expunged.)

Upon motion of Mr. Chiang, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that its previous motion directing staff to prepare a formal opinion in the matter of *California Steel Industries, Inc., 160703* be expunged.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and duly carried, Mr. Chiang, Mr. Klehs and Ms. Mandel voting yes, Mr. Parrish voting no, Mr. Andal not participating, the Board ordered staff to prepare a formal opinion in the matter of *California Steel Industries, Inc., 160703*.

#### **BUSINESS TAXES APPEALS HEARINGS**

**Seyed Razavi, 118219**

4-1-00 to 2-15-01, \$227,953.11

\$11,983.70 Penalty, Failure to File

\$21,911.40 Penalty, Failure to Timely Pay

For Petitioner:

Seyed Razavi

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the determined tax is excessive.  
Whether applicant is subject to corporate officer liability  
Whether relief from the penalty for failure to file the return is warranted.  
Whether relief from the penalty for failure to pay the determination is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to submit additional documentation, the Department 30 days to review the documentation and the Appeals Division 30 days thereafter to bring the matter back to the Board with a final recommendation.

**Robert Steven Harrell, 55776**

10-1-95 to 9-30-98, \$181,288.03 Tax

\$18,555.33 Penalty

For Petitioner:

Charles Nagel, Attorney

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether additional taxable sales were established in accordance with the facts.

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Whether disallowed claimed sales in interstate and foreign commerce are overstated.

Alternatively, whether certain disallowed sales in foreign commerce are valid sales for resale.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered to accept the adjustments as recommended by the Appeals Division and submit the remainder for decision.

**Powerup, Inc., 55778**

7-1-95 to 6-3-98, \$207,129.99 Tax

\$20,713.02 Penalty, Negligence

For Petitioner: Walter Weiss, Attorney

Brad Sachs, Representative

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether disallowed claimed sales for resale were established in accordance with the facts.

Whether audited taxable sales are excessive.

Whether taxable freight charges are overstated.

Whether relief from the negligence penalty is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, the Board ordered to delete the penalties.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**Argus Pacific LLC, 32802**

7-1-94 to 12-31-98, \$23,165.87 Tax

\$00.00 Penalty

**Shotmaker Sound, 89002081320**

7-1-94 to 12-31-97, \$14,207.87 Tax

\$448.80 Penalty, Failure to File

\$448.80 Penalty, Failure to Pay

**3-E Enterprises, Inc., 89002055410**

7-1-94 to 12-31-96, \$9,719.87 Tax

For Petitioner: Wynnsan Moore, Representative

For Sales and Use Tax Department: Robert D. Tucker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues in the petitions of 32802, 89002081320 and 89002055410:

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Whether Audio Techniques, Inc. paid tax on its acquisition of audio equipment, which it leased to 3-E for sublease by 3-E to 3-E's customers.

Whether Audiowest paid tax on its acquisition of audio equipment, which it leased to 3-E for sublease by 3-E to 3-E's customers.

Issue in the petition of 89002081320 only:

Whether petitioner should be relieved of penalties for failure to file returns and failure to pay a determination, which were originally assessed against 3-E.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered to adopt the revised recommendation of the Appeals Division to eliminate \$2,231.19 in tax with regard to *Argus Pacific LLC*, 32802.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered to adopt the revised recommendation of the Appeals Division to eliminate \$216.00 in tax with regard to *Shotmaker Sound*, 89002081320.

Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs voting no, the Board ordered to delete the penalties with regard to *Shotmaker Sound*, 89002081320.

Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, Mr. Klehs absent, the Board ordered that the remainder be submitted for decision.

The Board recessed at 12:00 p.m. and reconvened at 1:40 p.m. with Mr. Parrish, Mr. Chiang and Ms. Mandel present.

## **BUSINESS TAXES APPEALS HEARINGS**

### **Argus Pacific LLC, 32802**

7-1-94 to 12-31-98, \$23,165.87 Tax

\$00.00 Penalty

### **Shotmaker Sound, 89002081320**

7-1-94 to 12-31-97, \$14,207.87 Tax

\$448.80 Penalty, Failure to File

\$448.80 Penalty, Failure to Pay

### **3-E Enterprises, Inc., 89002055410**

7-1-94 to 12-31-96, \$9,719.87 Tax

For Petitioner:

Wynnsan Moore, Representative

For Sales and Use Tax Department:

Robert D. Tucker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

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Action: Upon motion of Ms. Mandel seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal and Mr. Klehs absent, the Board reduced the measure on all three cases by \$16,936.00, subject to audit verification.<sup>1</sup>

**Sidney L. & Michiko Soffer, 89000492790**

4-1-93 to 4-30-96, \$172,398.64 Tax

\$17,239.89 Negligence Penalty

For Petitioner:

Michiko Soffer

Mary O'Brien, Representative

For Sales and Use Tax Department:

Steven Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether any adjustments to the audited measure of tax are warranted.

Whether the liability at issue should be apportioned between petitioner-husband and petitioner-wife.

Whether the penalty for negligence should be deleted.

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal absent, the Board ordered that the petition be submitted for decision.

**Integrated Packaging Assembly Corporation, 80546**

1-1-97 to 3-31-97, \$76,335.27 Claim for Refund

For Claimant:

Javier Ramirez, Representative

Barry R. Pomrantz, Attorney

For Sales and Use Tax Department:

Warren L. Astleford, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether claimant's tax-paid purchases of equipment qualify for partial exemption for equipment purchased for use in its operations.

Action: Mr. Klehs moved that the petition be submitted for decision. The motion failed for lack of a second.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**Abdalla Hemond Qallab, 87622**

4-15-94 to 12-31-98, \$144,448.52 Tax

\$36,454.13 Penalty, Fraud

For Petitioner:

Appeal Withdrawn

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Action: The Board took no action.

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<sup>1</sup> See final action on petitions heard December 4, 2002.

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**Six To Eight Weeks, 30212**

12-13-94 to 12-31-98, \$00.00 Tax

\$00.00 Penalty, Fraud

\$11,302.62 Penalty, Negligence

For Petitioner:

Manfred Jossel, Treasurer

Dolores Nelson, Attorney

For Sales and Use Tax Department:

Jeffrey H. Graybill, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether relief from the negligence penalty is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and duly carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish voting yes, Ms. Mandel voting no, the Board ordered that the disputed measure of tax be reduced by 10 percent and directed staff to implement a 3-year payment plan.

**TAXPAYERS' BILL OF RIGHTS REIMBURSEMENT CLAIM HEARING****Les Alkana Motor Car Company, Inc., 167983**

4-18-02, \$89,686.25 Claim for Reimbursement

For Claimant:

Peter D. Aston, Representative

Raymond Aston, Representative

For Franchise Tax Board:

Steven Smith, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether the Department's position on claimant's Petition for Redetermination and Claim for Refund was reasonable.

Action: Upon motion of Mr. Klehs, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the claim for reimbursement be submitted for decision.

**BUSINESS TAXES APPEALS HEARINGS****Leonard Goldman and Julia A. Goldman, 55271**

1-1-92 to 12-31-97, \$420,270.83 Tax

\$105,067.71 Penalty, Fraud

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether a greater adjustment is warranted for bad debts.

Whether any portion of the interest should be abated.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.



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Desert Valley Medical Inc., 135361  
10-1-96 to 3-31-00, \$166,155.69 Tax  
\$00.00 Penalty

Desert Valley Medical Inc., 98002  
7-1-96 to 6-30-99, \$151,291.49 Tax  
\$00.00 Penalty

For Petitioner: Appearance Waived  
For Sales and Use Tax Department: Jeffrey H. Graybill, Tax Counsel  
Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether the evidence establishes that the amount of disallowed exempt prescription medicine sales is excessive.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Valor Computerized Systems, Inc., 140629, 87726

7-1-97 to 6-30-00, \$167,084.35 Tax

For Petitioner: No Appearance  
For Sales and Use Tax Department: Warren L. Astleford, Tax Counsel  
Action: The Board took no action.

Andrew Charles Henderson, 87774

1-1-98 to 12-31-98, \$2,937.64 Tax

For Petitioner: Andrew Charles Henderson  
For Sales and Use Tax Department: Steven Smith, Tax Counsel  
Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issue: Whether claimant purchased the 2000 Volvo, Model C7A for use in this state.

Action: Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be granted.

Toyota Motor Distributors Inc., 55844, 55273, 132784, 168174

1-1-94 to 9-30-95, \$00.00 Tax

1-1-94 to 12-31-96, \$336,337.28 Tax  
\$105,788.68 Penalty

For Petitioner: No Appearance  
For Sales and Use Tax Department: Warren L. Astleford, Tax Counsel  
Action: The Board took no action.

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**L.A. Mattress, Inc., 129840**

1-1-97 to 12-31-99, \$97,074.71 Tax

\$9,707.48 Penalty

For Petitioner:

W. Rod Stern, Attorney

For Sales and Use Tax Department:

Sharon Jarvis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the Sales and Use Tax Department reasonably established the measure of Tax for the audit item "Underreported Taxable Sales."

Whether petitioner has met its burden of proving that certain gross receipts constituted separately stated charges for transportation, and if so, whether such income may be excluded from tax.

Whether the 10-percent penalty for negligence should be abated.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Klehs, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang and Ms. Mandel voting no, the Board ordered that the petition be redetermined with adjustments.

**Mark Stanley, 91889**

7-1-96 to 6-30-98, \$6,285.00 Tax

\$00.00 Penalty

For Petitioner:

Mark Stanley

George Wass, Attorney

For Sales and Use Tax Department:

Trecia Nienow, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the taxpayer was the owner/retailer of the business known as Fairway Golf Cars during any portion of the period at issue.

Whether the taxpayer is entitled to relief from liability as an innocent spouse.

Mr. Levine stated for the record that in the review of the audit papers, the Department discovered a calculation error. As a result in the correction of this error, the protested measure of tax was reduced.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and duly carried, Mr. Klehs and Mr. Andal voting yes, Ms. Mandel voting no, Mr. Chiang and Mr. Parrish abstaining, the Board ordered that the petition be redetermined with adjustments.

**Neil Berry Ponsky, 89002071890**

1-1-90 to 12-31-97, \$73,951.16 Tax

\$00.00 Penalty

For Petitioner:

Walter Weiss, Attorney

Neil Ponsky

Heney Dong, Architect

For Sales and Use Tax Department:

Jeffrey H. Graybill, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

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Issues: Whether petitioner's sales of design drawings represent taxable sales of tangible personal property or nontaxable charges for preliminary art.

Whether petitioner is entitled to relief pursuant to Revenue and Taxation Code section 6596, because a Board employee told petitioner that he was performing a nontaxable service.

Action: Mr. Andal moved that the disputed measure of tax be reduced by 70 percent. The motion was seconded by Mr. Parrish but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no.

Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**Robert C. Jones, 62359**

10-1-96 to 9-30-99, \$18,506.87 Tax

\$1,850.70 Penalty

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Action: The Board took no action

**Brynnco Inc., 40886 & 83788**

7-1-96 to 9-30-97, \$12,021.28 Tax

\$1,202.13 Penalty

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Kevin Hank, Hearing Representative

Action: The Board took no action.

**Kuroki International, Inc., 117153**

1-1-98 to 12-31-00, \$41,539.54 Tax

\$4,160.97 Penalty, Negligence

For Petitioner:

Ron Channels, Accountant

For Sales and Use Tax Department:

Sandy McCaleb, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues: Whether the evidence shows that the audit was not completed in a fair manner.

Whether the large audit assessment results in "cruel and unusual punishment" and therefore is unconstitutional.

Whether relief from the interest charged is warranted.

Whether the negligence penalty should not be imposed.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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Buenos Aires, Inc., 116319

7-1-96 to 3-31-00, \$155,107.57 Tax

\$15,510.79 Penalty, Negligence

For Petitioner:

Ron Channels, Accountant

Manuel Rodriguez, President

Sorino Vera, Witness

For Sales and Use Tax Department:

Sandy McCaleb, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contributions were disclosed.

Issues:

Whether any statute or regulation is unconstitutional.

Whether the audited measure of tax was established in accordance with the facts.

Whether the 10 percent penalty for negligence should not be imposed.

Action:

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition be redetermined with adjustments.

**FINAL ACTION ON PETITIONS HEARD DECEMBER 4, 2002**

Mr. Andal moved to reduce the disputed measure of tax in the petition of *Darrell L. and Sandra D. Goble, 115302*. The motion was seconded by Mr. Klehs but failed to carry, Mr. Klehs and Mr. Andal voting yes, Mr. Chiang, Mr. Parrish and Ms. Mandel voting no.

Upon motion of Mr. Chiang, seconded by Ms. Mandel and duly carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal voting no, the Board ordered that the petition of *Darrell L. and Sandra D. Goble, 115302*, be redetermined as recommended by the Appeals Division.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *Michael Carl Davis, 117184*, be redetermined as recommended by the Appeals Division.

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *East Katella Partnership, 92782, 117104, 128635*, be redetermined as recommended by the Appeals Division.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that in the petition of *Robert Steven Harrell, 55776*, the remainder be redetermined as recommended by the Appeals Division.

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Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered to redetermine the remaining disputed measure of tax, directing the Department to aggressively pursue officers of predecessors and to withhold collection against *Shotmaker Sound, 89002081320*, for six months, and then the Department must report back to the Board as to its efforts to pursue those (former) officers of *Argus Pacific LLC., 32802*, and *3-E Enterprises, Inc., 89002055410*.

Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Parrish and Ms. Mandel voting yes, Mr. Andal abstaining, the Board ordered that the petition of *Sidney L. & Michiko Soffer, 89000492790*, be redetermined with adjustments.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *Integrated Packaging Assembly Corporation, 80546*, be redetermined as recommended by the Appeals Division.

#### **FINAL ACTION ON CLAIM HEARD DECEMBER 4, 2002**

Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, in the matter of *Les Alkana Motor Car Company, Inc., 167983*, the Board ordered that the claim for reimbursement be denied.

#### **FINAL ACTION ON PETITIONS HEARD DECEMBER 4, 2002**

Mr. Andal moved to reduce the disputed measure of tax by 70 percent. The motion was seconded by Mr. Parrish but failed to carry, Mr. Andal and Mr. Parrish voting yes, Mr. Chiang, Mr. Klehs and Ms. Mandel voting no, in the petition of *Neil Ponsky, 89002071890*.

Upon motion of Mr. Parrish, seconded by Mr. Andal and duly carried, Mr. Chiang, Mr. Andal and Mr. Parrish voting yes, Mr. Klehs and Ms. Mandel voting no, the Board ordered that the disputed measure of tax be reduced by 40 percent.

Upon motion of Mr. Klehs, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Klehs, Mr. Andal, Mr. Parrish and Ms. Mandel voting yes, the Board ordered that the petition of *Kuroki International, Inc., 117153*, be redetermined as recommended by the Appeals Division.

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The Board adjourned at 4:30 p.m.

*The foregoing minutes are adopted by the Board on February 6, 2003.*